

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 219 of 1983

in

SPECIAL CIVIL APPLICATION NO 3492 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

and

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

 2. To be referred to the Reporter or not? : NO

 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

 5. Whether it is to be circulated to the Civil Judge? : NO
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VA CHHAYA & Ors.

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR PV HATHI for Appellants

Ms. Manisha Lavkumar for Ms. Doshit for Respondent No. 1

RULE SERVED for Respondent No. 2, 3, 4, 5, 6, 7

CORAM : MR.JUSTICE R.K.ABICHANDANI

and

MR.JUSTICE A.K.TRIVEDI

Date of decision: 17/08/2000

ORAL JUDGEMENT(Per: R.K.Abichandani,J.)

The appellants challenge the judgment and order dated 30th November, 1982 of the learned Single Judge, rejecting the petition to the extent of their claim for promotional benefits in the cadre of Section Officers from the date of the eligibility for such promotion and consequent refixing of their dates of promotion, not only in the cadre of Section Officers but also in the higher cadre of Under Secretaries.

2. The appellants were serving at the relevant time as Section Officers in the Secretariat service of the State of Gujarat. They were promoted from the feeder cadre of Assistants and for such promotion, they were required to pass the examination known as " Gujarat Section Officers' Departmental Examination. The appellants did not pass the requisite examination within the prescribed time chances. However, later on, they passed that examination and came to be promoted as Section Officers. Their grievance was that those who were junior to them but had passed the examination within the prescribed time and chance came to be promoted earlier than them though at the time of their promotion, the appellants had also become eligible. According to the appellants, they could not have been denied their due seniority over other Assistants just because they had passed the examination earlier. In fact, the Rules came to be amended in the year 1975 which protected the seniority aspect of all those who had become eligible by virtue of having passed the examination notwithstanding that it was passed beyond the prescribed chances and period.

3. The stand taken up by the respondent-authority was that the appellants were not entitled to the benefit of the Rules as amended in the year 1975 because that amendment was not retrospective. According to the respondent authority, as per the Rule which was applicable to them at the relevant time, the appellants lost seniority over those who had passed the examination earlier than them. The learned Single Judge noted that the only contention which was raised by the appellants was that the earlier Rules cannot rob them of their seniority as Assistants and that they should have been given promotion when the persons junior to them were promoted and the fortuitous circumstance of their having cleared the examination earlier within the prescribed time limit and chances should not give them priority or

precedence in the matter of promotion. The learned Single Judge negativing this contention held that the amendment brought about in 1975 did not have any retrospective effect, because, it was a substantive provision intended to have a future effect. It was held that the loss of seniority did not disturb their position in the cadre of Assistants but only affect them for the purpose of promotion to the post of Section Officers in respect of which the appellants had lost seniority over their juniors who had passed the examination within the prescribed time limit and chances.

4. Rules 6 and 13 of the Gujarat Section Officers' Departmental Examination Rules, 1966 framed under Article 309 of the Constitution are material for the purpose of deciding the controversy that arises in this appeal, and therefore, these are reproduced hereunder:

"6. Where an Assistant fails to pass the departmental examination within the period specified in Rule 4 and according to the chances available to him under Rule 4 he shall notwithstanding such failure be eligible to appear at any time in such examination, on payment of an examination fee of Rupees fifteen and if he passes the examination, he shall be eligible for promotion to the post of Section Officer.

Provided that he shall not be entitled to claim seniority over those persons who have passed the examination earlier than he."

"13. Notwithstanding anything contained in these Rules, a person who has not passed the examination within the prescribed chances and during the prescribed period, may, if he so desires, appear at any examination held subsequently on payment of examination fee of Rs.15/- for appearing at the examination subject to the condition that he shall lose his seniority and that he shall also become junior to all those who have passed this examination earlier than him."

6. It will at once be seen from these Rules that the very condition of allowing the appellants to avail of the additional chances after having not cleared the departmental examination within the specified chances and time was that the appellants would become junior to all those who had passed the examination earlier than them and that the appellants would lose seniority over such persons. These statutory Rules were binding on the appellants and having availed of these Rules by appearing at the examination beyond the time and chances which were available to them in which they could not clear it, the

appellants cannot wriggle out of the said condition imposed thereunder for enabling them to become eligible which otherwise they would never have become under the Rules. It is, therefore, clear that the aforesaid Rules which enabled their juniors who had cleared the examination within the prescribed time limit and chances to gain seniority over them are a complete answer to their claim that their seniority should not have been affected by those who qualified themselves earlier and gained an edge over them for the purpose of promotion to the cadre of Section Officers.

6. We, therefore, find ourselves in complete agreement with the reasons given and the conclusions reached by the learned Single Judge on the aspect that the appellants were not entitled to claim seniority over their juniors who qualified themselves earlier and over whom the appellants could not have claimed seniority in view of the aforesaid provisions. The appeal is, therefore, dismissed with no order as to costs.

(R.K.Abichandani,J.)

(A.K.Trivedi,J.)

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